IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9586 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH

AND

HONOURABLE MR.JUSTICE H.B.ANTANI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

==========

DIGANT INDRAVADAN DAVE AND OTHERS - Petitioners
Versus
UNION OF INDIA AND OTHERS - Respondents

==========

Appearance :
MR SHALIN N MEHTA for the Petitioners.
MS MAUNA BHATT for the Respondents.

==========

CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 11/05/2007

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE H.B.ANTANI)

1. The petitioners have preferred the present petition under Articles 226 and 227 of the Constitution of India challenging the judgment dated 28-02-2001 passed by the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad in Original Application No. 174 of 1993 whereby the Original Application was dismissed and the petitioners were denied the pay-scale of Rs. 1350 – 2200 of Data Entry Operators (***"DEO"***, for short) Grade-B from September 1989.

2. The petitioners are working as DEO in the Income Tax Department. They are Graduates and appointed as DEO in pursuance of the advertisement bearing No. 30-A/88 dated 25-07-1988 published by the Central Employment Exchange, Ministry of Labour. Original Application No. 174 of 1993 was preferred by two applicants, namely, Alkesh Joshi, who is petitioner No. 29 in the present petition, and the Association of Railway and Post Employees. Since Original Application No. 174 of 1993 was preferred by the Association of Railway and Post employees on behalf of all the petitioners, they have got the *locus standi* to prefer the present petition in their individual names.

The Income Tax Department had framed the Income Tax Department (Attached And Subordinate Offices) Data Entry Operators Recruitment Rules, 1987. As per these Recruitment Rules, the post of DEO was required to be filled up by direct recruitment and the minimum qualification for appointment to the said post was Bachelors Degree from a recognized university with the knowledge of data entry work. The pay-scale prescribed for Data Entry Operator was Rs. 1200 – 2040. It is submitted that since there was non-availability of Graduates for appointment to the post of DEOs, respondent No. 1 amended the Recruitment Rules of 1987 on 22-07-1988 and the minimum educational qualification which was required for appointment to the post of DEO was

reduced from **“Graduate”** to **“Matriculation”**.

The advertisement was issued bearing No. 30-A-88 on 25-07-1988 by Central Employment Exchange, Ministry of Labour for filling up on 347 vacancies in the post of DEOs. The essential qualification which was mentioned in the advertisement for the eligibility was:- (i) Matriculation; (ii) Training in different Data Entry Operation; and (iii) Speed of not less than 8900 Key Depressions (without mistake). The pay-scale which was prescribed in the said advertisement for the post of DEO was Rs. 1200 – 2040. The last date for receipt of the application was mentioned as 08-08-1988. The petitioners had applied to the post of DEO in pursuance of the advertisement dated 25-07-1988. It is further submitted that all the petitioners were holding Bachelor's Degree though the advertisement dated 25-07-1988 prescribed minimum qualification as Matriculation for the eligibility. After the regular selection process was completed, the petitioners were appointed to the post of DEO in the month of February 1989.

The Office Memorandum dated 28-08-1989 was issued by the Ministry of Finance whereby 5 Grades for DEO, starting from A to E was prescribed. The Grades C, D & E were entirely promotional grades. DEO Grade-A was the Entry Grade with Higher Secondary Education as the minimum qualification carrying pay-scale of Rs. 1150 – 1500. DEO Grade-B was also an Entry Grade for the Graduates with knowledge of data entry and promotional grade for DEO Grade-A. Subsequently, the Government of India in the Ministry of Finance issued another Notification dated 11-05-1994 which superseded the DEOs Recruitment Rules 1987 and subsequently, Income Tax Data Entry Operators Recruitment Rules, 1994 were framed. The said Rules also provided for 5 Grades of DEO from A to E.

It is submitted that on 11-05-1994, the Deputy Secretary, Government of India addressed letter to all the Chief Commissioners of Income Tax with regard to restructuring of the cadre of DEOs in the Income Tax Department and it was stated in the said letter that new pay-scale of Rs. 1350 – 2200 of DEO Grade B would also be extended to all the DEOs recruited prior to July 1988 when the minimum educational qualification was “Graduate” under the Income Tax Department, DEO Recruitment Rules, 1987. Thus, the DEOs were to be designated as DEO Grade B and to be placed in the pay-scale of Rs. 1350 – 2200 wef 22-12-1993. It was further stated in the said letter dated 11-05-1994 that the DEOs, who were recruited at a time when “Matriculation” was the prescribed minimum qualification, would not be granted the higher pay-scale of Rs. 1350 – 2200 irrespective of the fact that whether they were possessing a Bachelor's Degree or a higher qualification at the time of appointment. The petitioners were appointed after the amendment of the Recruitment Rules, 1987 when the minimum qualification for the appointment to the post of DEO was brought down from “Graduate” to “Matriculation.” Thus, as per the said letter dated 11-05-1994, the petitioners were specifically excluded from the benefit of higher pay-scale on Rs. 1350 – 2200 though they were Graduates and would fall in the category of DEO Grade-B after restructuring of the cadre of DEOs in pursuance of the Recruitment Rules 1994.

The denial of respondent No. 1 to grant the petitioners higher pay-scale of Rs. 1350 – 2200 of DEOs Grade-B from the date of appointment came to be challenged by the petitioners by preferring Original Application No. 174 of 1993. The Central Administrative Tribunal, by order dated 28-02-2001 dismissed the Original Application. Thereafter, aggrieved by the said order, the petitioners preferred the present petition wherein the matter came up before the Division Bench of this Court (Coram: R. K.

Abichandani & K. M. Mehta, JJ.) and by order dated 14-10-2003, the following observations were made in para-6 of the order:

> "We are told by the learned counsel appearing for the revenue that the Central Board of Direct Taxes have accepted the decision of the Andhra Pradesh High Court confirming the decision of the Central Administrative Tribunal, Hyderabad, by which those who were appointed after the amendment in the Recruitment Rules on 13th August, 1988, were directed to be given the higher pay-scale of Rs. 1350-2200 applicable to Grade 'B' DEOs. Even the petitioners, who were appointed after 13th August, 1988, stood on the same footing as those who were given such benefits by the Central Administrative Tribunal, Hyderabad, as confirmed by the High Court of Andhra Pradesh, which decisions are accepted by the Central Board of Direct Taxes as stated by the learned counsel for the revenue. It is also pointed out to us by the learned counsel that the Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, have issued instructions on 4th September, 2003, to all the Chief Commissioners of Income Tax, agreeing to extend the benefit of the order of Central Administrative Tribunal, Principal Bench passed on 29.9.2002 to all identically placed Data Entry Operators Grade 'B' working in the Income Tax Department. It is clear from the stand taken by the CBDT by accepting the decision of the Andhra Pradesh High Court and also from the tenor of the communication dated 4th September, 2003, that the whole idea is to extend the benefit of higher pay-scale of Rs. 1350 – 2200 to all the graduate Data Entry Operators, irrespective of whether they were appointed prior to the amendment or after the amendment of the rules. The learned counsel for the petitioners therefore states that since the CBDT has now accepted the decision of the Andhra Pradesh High Court of giving the higher pay-scale of Rs. 1350 – 2200 in respect of the identically situated graduate DEOs who were appointed after the amendment Rules, 1988, the petitioners seek permission to withdraw this petition at this stage. Permission is granted. Since the benefit of the higher pay-scale Grade 'B' is already agreed to be given by the CBDT to the graduate DEO's appointed after the amended rules, 1988, it is understood that similar benefit will be extended also to the petitioners. The petition is permitted to be withdrawn subject to the aforesaid observations. Rule

is discharged with no order as to costs. Liberty to move in case of any difficulty."

However, as the benefit of the higher grade was not given to the petitioners by respondent No.1, the petitioners were constrained to approach the Court for reviving the earlier petition which was withdrawn by them and the petition came to be revived by order dated 18-06-2004.

2. Mr. Shalin Mehta, learned Advocate for the petitioners, submitted that in view of the advertisement issued by the Central Employment Exchange, Ministry of Labour, New Delhi bearing No. 30-A/88, the minimum qualification for DEOs was reduced from Graduation to Matriculation. The learned Advocate submitted that even in view of the decision rendered by the Andhra Pradesh High Court, confirming the decision of the Central Administrative Tribunal, Hyderabad, the petitioners be also given the higher pay-scale of Rs. 1350 – 2200 as applicable to Grade-B DEOs. It is further submitted by the learned Advocate that since the petitioners, who were appointed after 13th August, 1988 stood on the same footing, as those who had been given such benefits by the Central Administrative Tribunal, Hyderabad, which was confirmed by the Andhra Pradesh High Court and the decision was accepted by the Central Board of Direct Taxes, the petitioners also ought to have been given such benefit. The learned Advocate also placed reliance on the subsequent decisions rendered by the Central Administrative Tribunal, Ernakulam Bench passed in Original Application No. 204 of 2001 on 25-10-2002, which was in respect of giving the higher pay-scale to the DEO Grade-B. The order passed by Central Administrative Tribunal was confirmed by High Court of Kerala in WP (C) No. 12074 of 2004 (S) decided on 26-05-2005. The matter, thereafter, went right up to the Hon'ble Supreme Court where the Hon'ble Supreme Court, ultimately, dismissed the appeal preferred by the Commissioner of Income Tax and Others. The

Hon'ble Apex Court, thus, confirmed the order passed by the High Court of Kerala at Ernakulam which confirmed the order passed by the Central Administrative Tribunal at Ernakulam. In view of the aforesaid ruling given by the Hon'ble Apex Court, the petitioners cannot be denied the higher pay-scale in the grade of Rs. 1350 – 2200 as they are identically situated with other employees. Thus, the learned Advocate submitted that the petitioners who are similarly situated cannot be given dissimilar treatment by respondent No. 1 and the petition, in view of the aforesaid facts and circumstances, requires to be allowed.

3. As against the aforesaid submission, Ms. Mauna Bhatt, learned Advocate representing the respondents, vehemently submitted that the petitioner No. 29 Alkesh Joshi and Association of Railway and Post Employee had filed Original Application No. 174 of 1993 before the Ahmedabad Bench. 32 other petitioners who are joined in the present petition had not preferred the Original Application before the Ahmedabad Bench and, therefore, 32 petitioners cannot agitate the issue which was not agitated by them before the Central Administrative Tribunal, Ahmedabad and, therefore, on this preliminary ground, the petition deserves to be dismissed. The learned Advocate further submitted that the principle of equal pay for equal work is only applicable to the employees who are similarly situated and forming the same class. Even assuming without admitting that benefits of higher pay-scale are extended to the petitioners, then there will be a discrimination amongst the DEOs who are appointed on the basis of same advertisement and it is likely to open avenues for further litigation. That the judgment of the Andhra Pradesh High Court on which the reliance is placed by the learned Advocate for the petitioner is distinguishable on the facts, as in that case, it has been observed that the amendment in the Recruitment Rules to the grade of DEOs came into force from 13-08-1988. As against that in the present

case, in OM dated 11-05-1994, it is clearly mentioned that the amendment came into force wef July 1998. The learned Counsel has cited the following judgments in support of the submissions canvassed at the Bar:

(i) (2004) 4 SCC 646
(ii) (2004) 1 SCC 347
(iii) (1994) 2 SCC 521
(iv) (1998) 2 SCC 542
(v) AIR 2001 SC 1877
(vi) (1997) 3 SCC 321
(vii) AIR 2002 SC 2589
(viii) AIR 2002 SC 964

The learned Advocate further submitted that if the observations made by the Central Administrative Tribunal is taken into proper perspective, then the case of the petitioners is required to be treated as a fresh case and they cannot now be allowed to agitate the issue at a belated stage. The learned Advocate further contended that merely because the benefit was given to some of the employees, who had preferred the petition before the Hyderabad Bench of the Central Administrative Tribunal or before the Ernakulam Bench of the Central Administrative Tribunal, the same benefit cannot be extended to the petitioners as their case stands on a different footing. Even otherwise, as per the submission of the learned Advocate, the petition is devoid of the merits and as it is thoroughly misconceived, it requires to be dismissed.

4. Having heard the learned Counsel Mr. Shalin Mehta for the petitioners and Ms. Mauna Bhatt for the respondents and on perusal of the order passed by the Central Administrative Tribunal in Original Application No. 174 of 1993 as well as the earlier order passed by the Division Bench of this Court on 14-10-2003 in Special

Civil Application No. 9586 of 2001, we are of the considered view that the benefit which was given to the DEOs, who had preferred the application before the Central Administrative Tribunal, Hyderabad and which was confirmed by the Andhra Pradesh High Court as well as the benefits given to the DEOs, who had preferred the application before the Ernakulam Bench by preferring Original Application No. 204 of 2001, which was confirmed by the Kerala High Court as well as by the Hon'ble Apex Court, is required to be given to the petitioners as they are also similarly situated. When the final decision is confirmed by the Hon'ble Apex Court, we are not in a position to distinguish the case of the petitioners as submitted by the learned Advocate on behalf of the respondents. The petitioners who entered the service as DEOs with basic educational qualification of Graduation to their credit would in our view be entitled to the entry grade of pay-scale of Rs. 1350 – 2200. Even, as per the Government Resolution, the minimum qualification was reduced from Graduation to Matriculation. The claim, thus, made by the petitioner with regard to the pay-scale of Rs. 1350 – 2200 is just and proper in the facts and circumstances of the case and requires to be upheld. We have also considered the other submissions canvassed by the learned Advocate for the respondents with regard to the maintainability of the petition as well as the principle of equal pay for equal work which is applicable only to the employees who are similarly situated and forming the same class. There is no force in the submissions canvassed by the learned Advocate on behalf of the respondents and the contentions raised by the learned Advocate are stated to be rejected. We have also considered the judgments cited by the learned Advocate for the respondents and there is no dispute about the ratio laid down in those judgments. However, we find that the respondents cannot derive any benefit to support their case on the basis of those judgments.

5. In view of the foregoing discussion, we quash and set aside the judgment dated 28-02-2001 passed by the Central Administrative Tribunal, Ahmedabad Bench in Original Application No. 174 of 1993 and allow the petition with the following reliefs:

(i) The respondents are directed to grant higher pay-scale of Rs. 1350 – 2200 to all the petitioners from September 1989.

(ii) The arrears of difference of higher pay-scale of Rs. 1350 – 2200 is also required to be given to all the petitioners with all the consequential benefits within three months from the date of receipt of this judgment.

Rule is made absolute. No costs.

[M. S. SHAH, J.]

[H. B. ANTANI, J.]

/shamnath